Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications	)	
Act of 1996:	)	
	)	
Telecommunications Carriers' Use of	)	CC Docket No. 96-115
Customer Proprietary Network Information	)	
and Other Customer Information	)	

PETITION FOR RECONSIDERATION

National Telephone Cooperative Association
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SUMMARY

The National Telephone cooperative Association (NTCA), a national association of approximately 500 local exchange carriers who provide service mainly in rural areas, petitions the FCC to reconsider its CPNI rules.

NTCA believes that the CPNI use restrictions are overly complex and burdensome and not in compliance with the pro-competitive, deregulatory national policy framework of the 1996 Act. The FCC's prohibition of the use of CPNI without customer approval to market CPE or message storage devices is counterintuitive. CPE as it relates to CMRS and specialized wireline services is necessary to and used in the provision of the service. It thus falls squarely within Section 222's provision for CPNI use.

The FCC disallows the use of CPNI for message storage services, but permits it for call waiting and call forwarding. The distinction is based on a technology employed analysis and not a more appropriate functional analysis. The consumer sees all of the services similarly. They allow a call to go through when the usual communications path is unavailable. The FCC should reconsider its conclusions and regulate the services similarly, thus allowing CPNI use.

Unlike other large LECs which may have fully automated tracking systems and thousands of lines with which to spread out the cost of implementing the new regulations, the members of NTCA have few lines and in most cases no automated tracking systems. Within these limitations, the new auditing and tracking requirements will be cost prohibitive and functionally impracticable for rural companies. The FCC should forbear from requiring rural telecommunications companies from complying with the complex auditing and tracking requirements related to CPNI use and restrictions.

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Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	)	CC Docket No. 96-115

PETITION FOR RECONSIDERATION

Pursuant to 47 C.F.R. §1.429, the National Telephone Cooperative Association ("NTCA") hereby petitions the Federal Communications Commission to reconsider its *Second Report and Order*[1] in the above captioned proceeding.

I. INTRODUCTION

NTCA is a national association of approximately 500 local exchange carriers that provide service primarily in rural areas. All NTCA members are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996 (the "Act").[2] Approximately half of NTCA's members are organized as cooperatives.

NTCA believes that the FCC has gone too far and imposed overly complex and burdensome rules in an effort to protect what it sees as the consumer's privacy. These rules go far beyond Congressional intent and should be reconsidered. Also, NTCA believes that the FCC

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[1] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary network Information and Other Customer Information*, Second Report and Order, CC Docket No. 96-115, Released February 26, 1998, appeared in Federal Register April 24, 1998.

[2] 47 U.S.C. §§ 151 *et. seq.*

failed to recognize the incredible costs associated with its auditing and tracking procedures and the detrimental effect it will have on those small businesses providing telecommunications services. After a full reconsideration of the record, NTCA believes that the Commission will find that the current CPNI rules are overly complicated and that the auditing and tracking procedures should not apply to rural telecommunications providers.

II. FCC'S RULES ARE OVERLY COMPLEX AND BURDENSOME

The Telecommunications Act of 1996 was enacted to "provide for a pro-competitive, *de-regulatory* national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans . . . "[3] This overriding policy has guided the Commission in all of its rulemakings resulting from the Telecom Act.[4] This goal is also espoused in the instant proceeding, but is frustrated by the Commission's failure to properly balance both pro-competitive and customer privacy goals.[5] NTCA respectfully submits that a balance regarding customer privacy regulations could and should fit under the pro-competitive, de-regulatory umbrella, but as currently written, do not.

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[3] Joint Statement of Managers. S. Conf. Rep. 104-230, 104th Cong., 2d Sess. (1996) (Joint Explanatory Statement), *emphasis added.*

[4] See, *e.g., Implementation of the Telecommunications Act of 1996: Telemessaging, Electronic Publishing and Alarm Monitoring Services*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 3824 (1997).; *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996,* Report and Order, 12 FCC Rcd 5470 (1997).; *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996,* Report and Order, 12 FCC Rcd 2170 (1997).

[5] *Second Order* at ¶ 3.

A. The FCC Should Reconsider its "Total Service Approach"

Section 222 of the Communications Act[6] governs the use and disclosure of CPNI by all telecommunications carriers. The *Second Order* imposes extensive new rules intended to implement Section 222. Subsection 222(c)(1) states:

> Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunication service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

The CPNI rules apply to all telecommunications carriers, including local and long distance carriers and many wireless carriers, such as cellular, paging and personal communications service providers. The number of carriers subject to CPNI use restrictions has increased from nine to several thousand. Under the new rules enacted as a result of Section 222, carriers may only use CPNI without customer approval to market offerings related to the service category to which the customer already subscribes. This rule disadvantages small LECs seeking to expand the array of services rural customers demand. The current rules provide that if a customer receives several services from a single large carrier, (*i.e.*, cellular, local exchange and long distance) the carrier may use the customer's CPNI from one service in marketing any of the other services, assuming that the customer subscribes to both services (*i.e.*, the carrier may use information about the customers long distance calling habits from 6pm to 11pm to market a

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[6] 47 U.S.C. § 222. This provision was added to the Communications Act by Section 702 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

particular cellular calling plan). However, a small, rural local exchange carrier who is looking to launch different category service in a new technology does not have the ability to target its largest customers without first obtaining approval. This result harms consumers in rural markets and the small telecommunication companies, and certainly hinders competitive opportunities. Rather than strike a balance between competitive and consumer privacy interests, the Commission has gone overboard in prescribing detailed and burdensome regulations at the expense of competition and the universal availability of advanced services.

Very often in a rural area, there is only one provider of telecommunications service. The area simply cannot support the competition provided by another carrier. The carrier does not benefit from an unfair competitive advantage by promoting new services or equipment to its subscribers. The Commission is under a statutory mandate to promote the delivery of advanced telecommunications capability to rural areas on a reasonable and timely basis.[7] Limiting the information consumers receive about advanced telecommunications runs afoul of that statutory mandate.

B. The FCC Should Reconsider Its Prohibition on Use of CPNI to Market CPE or Message Storage Services

NTCA believes that the Commission incorrectly determined that Section 222(c)(1)(B) acts as an absolute prohibition against the use of CPNI. Section 222(c)(1)(B) explicitly permits the use of CPNI for "services necessary to, or used in, the provision of such telecommunications service."[8] NTCA believes the Commission has misinterpreted Congressional intent and

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[7] *See* 47 U.S.C. § 254; 47 U.S.C. § 309(j); 47 U.S.C. § 706.

[8] 47 U.S.C. § 222(c)(1)(B).

therefore gone too far in imposing its CPNI restrictions as they apply to CPE and message storing services.

The Commission concluded that a carrier may not use, disclose, or permit access to CPNI, without customer approval "for the provision of CPE and most information services because, . . . , they are not 'services necessary to, or used in, the provision of such telecommunications service'"[9] NTCA submits that this conclusion was in error and should be reconsidered.

Especially in a CMRS environment, CPE is an integral part of the provision of the telecommunications service. CMRS CPE is network-specific and linked directly to the network it is on. CMRS customers view the equipment (*i.e.*, handsets, pagers, antennas) as part of their service package. Both service and equipment is typically bought from one source. The customer expects to receive information about new products and services it may be interested in, without being subject to marketing for products they are unable to use because of their particular CMRS configuration.

The Commission purports to examine the existing customer relationship to determine the customer's expectations with regard to CPNI.[10] However, there is no evidence that the Commission ever considered the CMRS customer relationship.

While the Commission does discuss customer expectations as they relate to CPE and wireline services, it does so superficially. Just as CPE is integral to the provision of CMRS service, so is CPE integral to the provision of certain specialized wireline services that fall within

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[9] *Second Order* at ¶ 71.

[10] *Second Order* at ¶ 23.

the local exchange category. For example, caller ID service requires the use of a display devise for the service to be of use. The current rules permit the use of CPNI to target consumers who may be interested in caller ID. However, the rules may be read to prohibit using CPNI to market the equipment necessary to receive the caller ID.[11] Therefore, in one solicitation, a carrier may discuss the service, but must request permission to use CPNI before discussing the display device without which the service is useless.

Furthermore, the Commission has already concluded that inside wire is within the scope of Section 222(c)(1)(B) because such equipment is a necessary component of the carrier's ability to provide the specific service ordered. Specialized CPE is at least as "necessary to, or used in" the provision of service as is inside wire. The Commission offers no explanation for its distinction.

The Commission erroneously concluded that voice mail, store-and-forward, short message services and similar services (hereinafter "message storage services") do not fall under the category of services for which CPNI may be used under Section 222(c)(1) of the Act. Customers do not distinguish categories of services between telecommunications and information. Voice mail and short message services serve an important function of receiving messages when a caller cannot get through to the person dialed. Therefore message storage services perform a function similar to call waiting and call forwarding, which is to complete a communications path to the customer when normal reception is not available. The *Second Order*

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[11] A caller ID display device does not fit squarely within any of the Commission's definitions. It is therefore unclear how the Commission will treat the marketing of such devices. The discussion of CPE in the *Second Order* suggests that such devices would be characterized as CPE and it is treated as such for purposes of this discussion. This is a further example of how the Commission's CPNI rules are unnecessarily complicated.

correctly recognizes that call waiting and call forwarding is necessary to, or used in the provision of, telecommunications service within the meaning of Section 222(c)(2)(B), but incorrectly determines that message storage services are not. There is an integral relationship between call forwarding features and message storage services. The customers perceive the features to be part of the same offering as they are tools available to the customer to manage use of his or her telephone service. The Commission distinguishes message storage services from call waiting and call forwarding based on the technology employed rather than function of service. Message storage services are "services" that are part of the customer's total service relationship with a carrier and are therefore necessary to or used in the provision of telecommunications service. These services are no different from those adjunct-to-basic services described in 47 C.F.R. § 64.2005(c)(3),

The commission frames its discussions in the *Second Order* around customer expectations. However, the conclusion reached regarding CPE & message storage services is counterintuitive and is in direct opposition to customer expectations. NTCA respectfully submits that the Commission should reconsider its reasoning and conclusions.

III. THE COMMISSION SHOULD FORBEAR FROM APPLYING THE COMPLEX AUDITING AND TRACKING PROCEDURES TO RURAL TELECOMMUNICATIONS COMPANIES

Title IV of the Telecommunications Act of 1996 directs the Commission to forbear from applying any regulation to a telecommunications carrier where enforcement is: (1) not necessary to ensure that the carrier's charges and practices are just and reasonable; (2) not necessary for the

protection of consumers; and (3) where forbearance is in the public interest.[12] The FCC is also directed to utilize regulatory forbearance to encourage the deployment of advanced telecommunications capability to all Americans. The Commission is therefore under a statutory mandate to implement regulatory forbearance where appropriate. It is clearly appropriate in this instance. The costs associated with the FCC's complex auditing and tracking procedures will be devastating to small rural telecommunications companies ("telcos"). Forbearance will encourage the development of advanced services in rural areas.

A. Forbearance is in the Public Interest

The FCC requires telecommunications carriers to develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription. Carriers must also maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose. Carriers are given no option to use alternative record keeping mechanisms. They MUST purchase and implement software within eight months. Not only is the software not going to be available on time,[13] it will be expensive. The software providers must engineer the software, train the software installers, train the software support representatives, and train the personnel of each client.[14] This cost will be passed to the telcos and eventually to the consumer.

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[12] 47 U.S.C. 160(a).

[13] See attached letter of David A. Waite of Mid America Computer Corp.

[14] *Id.*

NTCA polled its member companies about the estimated costs associated with the new CPNI rules.[15] Three hundred and fourteen companies responded. While 98 percent of the responding rural companies with more than 5,000 access lines have mechanized customer service records, only 73 percent of companies with less than 1,000 access lines do. Thus, the smallest companies are faced with a huge upgrade. Of those respondents that are mechanized less than 10 percent have the ability to add a field to indicate CPNI approval status. The estimated cost of adding that field averages out to $50,000.00 per entity, or $12.00 per line on average and for the smallest rural telcos, $38,500.00 per entity, or $64.00 **per line**.

Even more alarming, fewer than 7 percent of the rural telcos who responded to the survey have electronic audit capability. Despite this fact, the FCC requires that within eight months all telecommunications companies have the ability to electronically track when a customer record is open, by whom and for what purpose. The cost associated with this capability is outrageous. NTCA's members estimated that they would be required to spend between $60,000.00 and $70,000.00 for the capability. For companies with just 600 access lines, this translates to more than $100.00 per line.

In short, those rural telcos which are already mechanized will spend somewhere between $16.00 and $167.00 per access line for the one-time, up-front costs associated with the auditing and tracking procedures adopted by the FCC. The cost for rural companies which are not

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[15] Members were asked to indicate whether or not they had mechanized customer service records. If they had mechanized records, they were asked if their existing software would permit them to add a field at the top of the screen to indicate each customer's CPNI approval status. And if the answer was "no" they were asked to estimate the cost to add this capability. They were also asked if they currently had electronic audit capability to record opening of customer records: when, by whom and why? And if not to estimate the cost to implement this capability. Results were tabulated by size of company.

mechanized (26% of companies with less than 1,000 access lines) is unknown. Add to this the recurring costs associated with training and additional personnel. Rural telcos will be forced to unnecessarily spend hundreds of thousands of dollars which could be better invested in new technologies and services. Forbearance is appropriate as it furthers Congress' intent. The Commission should reexamine its rules and prepare a cost-benefit analysis.

B. Forbearance is Appropriate because Some Rules are Not Needed to Achieve the Goals of Section 222 or to Protect Consumers

NTCA submits that the tracking and auditing procedures are unnecessary. While the FCC's goal of protecting the consumer's privacy is laudable, it goes too far. There are far less expensive, less burdensome, and less complicated ways of achieving the same goal. NTCA proposes, for example, that rural telcos be permitted to send out a mailing once a year informing all customers of their CPNI rights, including how and where to file complaints at the FCC. Each telco could keep strict records on CPNI use and permission, but would develop its own record keeping system. For example, it may be perfectly appropriate for a telephone cooperative with less than 300 access lines to refer to its records manually. The Commission's complaint procedures are sufficient safeguards to ensure carrier compliance. An approach that relies on existing procedures is simple, effective and the telco has the ability to determine the most efficient way for it to comply with the CPNI rules.

Also, the Commission never considered the case of a telephone cooperative. The member owners of cooperatives should have the option of forgoing their privacy rights on a voluntary basis under self-imposed rules in favor of the significant savings they can enjoy from less complicated procedures than those in Commission rules.

The FCC should reconsider its rules in light of Congressional intent in passing the Act. The Act was *deregulatory* in nature. The tracking and auditing rules are complex, unnecessary, burdensome and clearly not deregulatory.

IV. IN THE ALTERNATIVE, RURAL TELECOMMUNICATIONS COMPANIES SHOULD BE ELIGIBLE FOR A WAIVER OF THE AUDITING AND TRACKING PROCEDURES

NTCA firmly believes that forbearance of the auditing and tracking procedures as they apply to rural telecommunications companies is appropriate. The entire class of rural telcos will suffer an extreme financial hardship if the current rules remain in place. Congress specifically stated that forbearance should be implemented when a regulation is not necessary to protect consumers, when it is in the public interest and when it promotes the deployment of advanced telecommunications services in rural areas. It is difficult to imagine a more appropriate circumstance for regulatory forbearance. However, NTCA recognizes the Commission's reluctance to grant regulatory forbearance and therefore submits that if the FCC deems it appropriate to deny the forbearance request, it should grant rural telcos a blanket waiver of the auditing and tracking requirements.

As is demonstrated above, the implementation of the software required by the Commission may be cost prohibitive for small rural telcos for a long time. Individual waivers based on financial hardship are expensive for small telcos. In view of the widespread problems, the rules will create, the Commission should grant a blanket waiver in the event it decides not to forbear.

V. CONCLUSION

Effective implementation of the Telecommunications Act of 1996 requires that the FCC enact rules with Congressional intent in mind. The CPNI rules are complex and burdensome and in direct conflict with Congress' overall objectives to simplify and deregulate. NTCA respectfully submits that the Commission should reconsider its CPNI rules in light of the information presented herein.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

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May 26, 1998

MACC
MidAmerica Computer Corp.

May 6, 1998

National Telephone Cooperative Assn.
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Attn: Mr. Paul Johnson

This letter is in response to the impending need to comply with certain FCC orders concerning Customer Proprietary Network Information or CPNI.

Mid America Computer Corporation (MACC) is a provider of billing services to nearly 300 ILEC's across the U.S. These companies use and rely upon MACC software to provide a proper Operational Support System and billing solution.

The first comment I wish to make concerning CPNI is the significant costs to meet the requirements specified in the FCC order. As I hope is apparent for many companies, there is information considered to be proprietary to the customer stored in many systems and subsystems that in concert make up our current product. The problem then is not how to secure any one location of this information, but all of them.

Secondly, we understand that the order goes into effect 30 days after issue but enforcement will be delayed for 8 months. Although the requirements apply immediately, MACC will be unable to code test and deliver a solution to our clients in the 8 month window. At this time, it is impossible to estimate any time requirement to implement an acceptable CPNI solution.

Third are the training issues. MACC will have to engineer a solution for this requirement, train our software installers, train our software support representatives, and train the front office and CSR personnel of our client companies. This will take time and expense to accomplish. Again, I do not believe that the 8 month window will satisfy this need even if we did have a software solution deployed to our customer base.

And fourth, there are service delivery issues. If in the normal discourse of customer contact there must be a disclosure and acceptance of authorization, there is a real concern that all of this will introduce added time in the customer contact process. And this is compounded by the requirement for the audit 'database'. Any access of customer information must be tracked as to who, when and why, and we project a significant penalty in time to perform these functions.

In summary, this issue will require a tremendous effort to satisfy. Although we understand the overall desire or intent of the order is to protect consumers from unfair or predatory marketing practices, we feel that the independent telephone companies have always shown extreme respect and protection of any customer information. They are not the offenders in the use and abuse of such information, and should not be subjected to the CPNI order directed at them by the FCC.

David A. Waite

David A. Waite
Asst. V.P. & Director - Information Systems

cc: Bob Sims - Chief Operating Officer - MACC

CERTIFICATE OF SERVICE

I, Rita Bolden, certify that a copy of the foregoing Petition for Reconsideration of the National Telephone Cooperative Association in CC Docket No. 96-115 was served on this 26th day of May 1998, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

Rita Bolden

Rita Bolden

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